**Garrett Railroad Car & Equipment, Inc. *and* United Steelworkers of America and its Local 8089, AFL-CIO-CLC.** Case 6-CA-12842

April 6, 1981

## DECISION AND ORDER

On October 15, 1980, Administrative Law Judge Sidney J. Barban issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,[1] the General Counsel as well as the Charging Party filed limited cross-exceptions and memoranda in support thereof, and Respondent filed a brief in response thereto.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order as modified herein.

The Administrative Law Judge found, in pertinent part, that Respondent was justified in discharging striking employee Anthony Senchak for engaging in misconduct during the strike; he therefore recommended dismissal of the complaint allegation that Senchak's discharge violated Section 8(a)(1) of the Act. The General Counsel excepts contending, *inter alia*, that the Administrative Law Judge made certain unsupported factual findings regarding Senchak's strike conduct, and that the conduct he did engage in was not sufficiently serious to warrant his discharge. For the reasons set forth below we find merit to the General Counsel's exceptions.

The Administrative Law Judge found that on July 30, 1979, a vendor truck left Respondent's premises followed by a passenger car containing management personnel. Senchak was nearby on a motorcycle and, when the truck and the car turned a corner out of Senchak's sight, he followed them. When Senchak turned the corner he observed a striking coworker on the ground and others standing about who were shouting that the man on the ground had been hit by either the car or the truck. Senchak did not stop, but followed the two vehicles, ostensibly to cause them to stop and await the sheriff, who according to Senchak was in the group around the fallen striker. For the next 5 miles Senchak and two other strikers on motorcycles drove, according to the Administrative Law Judge, "in front of and around the truck and the car in such a fashion as to impede and interfere with their safe use of the highway, finally causing the truck and the car to pull off the road at a commercial establishment," where the driver of the truck called the police. Before the police arrived Senchak and the other motorcyclists left. According to Senchak they did so because they decided that the police were not going to come. On the basis of these facts the Administrative Law Judge concluded that even if Senchak believed that Respondent's truck or car was involved in a hit-and-run incident, Senchak's conduct, as described above, justified his discharge. We disagree.

The record fails to establish that Senchak drove in such a way as to impede and interfere with the safe use of the highway by the truck or the car. First, not one witness[4] testified that the motorcycles drove "around" the car and the truck as found by the Administrative Law Judge. Thus, his finding that the motorcyclists impeded or interfered with the safe use of the highway on this basis lacks evidentiary support. Second, the record indicates that during the course of the 5-mile ride, Senchak, unlike the other two motorcyclists, drove primarily between the car and the truck. Thus, Senchak testified that upon leaving Respondent's facility he was behind the car which was following the truck; that about 2 miles from Respondent's facility he passed the car; that both of the other motorcylists were in front of the truck; but that he primarily remained behind the truck and at no time went in front of the truck. Further, none of Respondent's witnesses recalled more than two motorcyclists being in front

[1] Respondent also has filed a motion to reopen the record in which it contends that the Board's recent decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), necessitates the taking of additional evidence concerning the basis for the discharge of striking employee Fred Main. However, since the record establishes, as the Administrative Law Judge found, that Main did not engage in the strike misconduct for which he was discharged, the issue was properly resolved under *N.L.R.B.* v. *Burnup & Sims, Inc.*, 379 U.S. 21 (1964), and the principles of *Wright Line* have no applicability. Accordingly, Respondent's motion is hereby denied.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] Chairman Fanning and Member Jenkins would also find the discharge of striker Timothy J. Vannatten, allegedly for throwing rocks, discriminatory and in violation of Sec. 8(a)(3). The Administrative Law Judge found that "both sides threw" stones, but that the General Counsel had not proved disparate treatment against Vannatten as a member of the bargaining committee because "other strikers" were also discharged for rock-throwing incidents. That is too narrow a view of the matter; only strikers were discharged, although strikers and nonstrikers were involved in rock-throwing incidents.

Member Zimmerman dissents from his colleagues' reversal of the Administrative Law Judge's finding that Vannatten lost the protection of the Act by virtue of his strike misconduct. For the reasons stated by the Administrative Law Judge, Member Zimmerman would dismiss the complaint insofar as it alleges a violation concerning Vannatten's discharge.

[4] The witnesses who testified to this incident included Senchak and Robert Berkebile, the driver of the truck, and two passengers who were in the car, Harold Robinson, the car shop supervisor, and John Shearer, the assistant to vice president, car parts division.

of the truck at any one time, and Robinson, a passenger in the car, specifically distinguished Senchak from the two motorcyclists who rode in front of the truck.[5] Third, the record shows that the only conduct which conceivably might be considered reckless consisted of the two lead motorcyclists' repeatedly applying their brakes or slowing down, thereby necessitating the vehicles behind them, including Senchak's, to do likewise. Indeed, only Robinson's testimony can be construed as attributing sudden braking to Senchak, as well as the other motorcyclists, and, upon reflection, Robinson testified that Senchak's predominant misconduct was his shouting obscenities at the passengers of the car.

In view of the foregoing, we find the evidence insufficient to establish that Senchak's conduct in driving between the truck and the car endangered the safety of the occupants of those vehicles. The evidence does not show that Senchak drove in a reckless manner. He did not attempt to force either conveyance off the road, albeit he verbally insulted and abused the drivers of both as a means of getting them to pull their vehicles over to the side of the road. But verbal abuse and offensive language do not cost striking employees the protection of the Act;[6] nor does the use of such language turn Senchak's driving tactics into hazardous conduct. Thus, since Senchak's conduct did not risk the safety of others to any significant degree, we conclude that it does not provide a sufficient basis to justify his discharge.[7] Accordingly, we find that Senchak's discharge violated Section 8(a)(1) of the Act.[8]

[5] Senchak did testify that at one point he moved alongside the truck, from his position behind it, and shouted to Berkebile to pull over. His testimony was corroborated by that of Berkebile who recalled one motorcyclist riding beside the truck and demanding that he pull over.

[6] The Board does not condone the use of abusive or obscene language. However, it has long held, with court approval, that such language does not cause a striking employee to lose the Act's protection. See *Coronet Casuals, Inc.*, 207 NLRB 304 (1973); *Terry Coach Industries, Inc.*, 166 NLRB 560, 563-64, fn. 2 (1967), enfd. 411 F.2d 612 (9th Cir. 1969); *Schott Metal Products Company*, 128 NLRB 415 (1960); *Longview Furniture Company*, 100 NLRB 301, 304-305 (1952); *Brown & Root, Inc.*, 246 NLRB 33 (1979); and see *Linn* v. *United Plant Guard Workers*, 383 U.S. 53, 60-61 (1966).

[7] Respondent contends that Senchak's discharge also was based upon an alleged threat made by him to Parts Department Foreman Bryan Donahue to the effect that he knew where Donahue lived and would get Donahue. Senchak denies making such a threat and Respondent Administrative Assistant Bruce Garrett, who was the only witness to testify that Senchak made this remark, admitted not knowing whether Donahue heard the alleged threat. We find that even if Senchak made the alleged threat it is not, without more, justification for his discharge.

[8] We shall, therefore, modify the Administrative Law Judge's recommended Order and notice to require Respondent to offer Senchak and Vannatten reinstatement to their former or substantially equivalent positions and pay them backpay, with interest thereon, in the manner prescribed in the section of the Administrative Law Judge's Decision entitled "The Remedy."

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Garrett Railroad Car & Equipment, Inc., New Castle, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(c):

"(c) Offer Fred Main, Anthony Senchak, and Timothy J. Vannatten immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings or benefits they may have suffered due to the discrimination practiced against them in accordance with the provisions set forth in the section of the Decision entitled 'The Remedy.'"

2. Substitute the attached notice for that of the Administrative Law Judge.

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT induce, encourage, or help employees in the circulation of petitions to get rid of United Steelworkers of America and its Local 8089, AFL-CIO-CLC.

WE WILL NOT withdraw recognition from and refuse to bargain with the Union as the exclusive bargaining representative of our employees in the appropriate unit set forth below:

All production and maintenance employees employed by Respondent at its Cherry Street, New Castle, Pennsylvania, facility, excluding clerical and technical employees, and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT refuse to reduce to writing, execute, and abide by the terms of the collective-bargaining contract we agreed on with the Union on September 28, 1979.

WE WILL NOT discharge or refuse to reinstate employees for engaging in concerted activities protected by Section 7 of the Act.

WE WILL NOT in any other manner interfere with, coerce, or restrain our employees in the

exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

WE WILL, upon request, recognize and bargain collectively with United Steelworkers of America and its Local 8089, AFL-CIO-CLC, as the exclusive bargaining representative of the employees in the appropriate unit set forth above.

WE WILL, upon request, put in writing the bargaining contract agreed to between the Union and the Company, and sign the contract and abide by its terms.

WE WILL offer Fred Main, Anthony Senchak, and Timothy A. Vannatten immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or any other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of wages and benefits they may have suffered due to the discrimination practiced against them by paying each of them a sum equal to what he would have earned, less any net interim earnings, plus interest.

GARRETT RAILROAD CAR & EQUIPMENT, INC.

## DECISION

### STATEMENT OF THE CASE

SIDNEY J. BARBAN, Administrative Law Judge: This matter was heard at Pittsburgh, Pennsylvania, on April 28 and 29, and May 6, 1980, upon an amended complaint issued on March 11, 1980,[1] based on a charge filed October 19 and amended December 21 by the above-named Charging Party (herein the Union). The complaint alleges that the above-named Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended (herein the Act), by inducing the employees to sign a petition asserting that they no longer wished to be represented by the Union for the purposes of collective bargaining, and violated Section 8(a)(1) and (3) by discharging Fred A. Main, Timothy Vannatten, and Anthony Senchak, and violated Section 8(a)(5) and (1) by refusing to acknowledge, reduce to writing, execute, or be bound by a collective-bargaining agreement, alleged to have been agreed to by the Union and Respondent, and by withdrawing recognition from the Union as the collective-bargaining representative of the employees. The answer denies the unfair labor practices alleged, but admits allegations of the complaint justifying assertion of jurisdiction under the National Labor Relations Board's present standards (Respondent, engaged in the manufacture, repair, and distribution of railroad cars and related products at its facilities at New Castle, Pennsylvania, during a recent period shipped goods and materials valued in excess of $50,000 directly to points outside the Commonwealth of Pennslyvania from its New Castle facility), and to support a finding that the Union is a labor organization within the meaning of the Act.

Upon the entire record in this case, from my observation of the witnesses and their demeanor, and after consideration of the briefs filed by Respondent and the General Counsel, I make the following:

### FINDINGS AND CONCLUSIONS

#### A. *Summary of Facts and Issues*

The Union was certified by the Board, apparently in 1973, as the collective-bargaining representative of Respondent's employees in the following unit, which Respondent agrees is an appropriate unit within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by Respondent at its Cherry Street, New Castle, Pennsylvania facility, excluding clerical and technical employees and guards, professional employees and supervisors as defined in the Act.

Thereafter, the Union and Respondent entered into successive collective-bargaining agreements effective from April 1, 1973, through March 31, 1976, and from May 1, 1976, through March 31, 1979. On or about February 20, the Union and Respondent began negotiations for an agreement to succeed the agreement due to expire on March 31. Negotiations continued until September 28. During this period, the employees, on April 25, went on strike in support of their contract demands. On July 25, Respondent, after summarizing its bargaining position in a letter to the strikers, advised the strikers that it intended to resume operations, and would replace those strikers who did not return to work. Respondent followed this, on September 27, by discharging 11 strikers, including Vannatten, Main, and Senchak for alleged misconduct during the strike. Respondent had earlier sought, and on August 3 secured an injunction from the local court, described in more detail hereinafter, against certain picketing.

At the end of the negotiating session on September 28, the Union advised Respondent that it would submit Respondent's proposal on contract terms to the Union's membership for ratification, on Sunday, September 30. Respondent's counsel, James Ferber, advised Union Representative Clarence Mannarino that the latter should notify Ferber of the results of the ratification meeting, and gave Mannarino his home phone number for that purpose. According to Ferber, he told Mannarino that "if the contract is ratified, we're going to have to prepare some kind of summary." He further says that Mannarino at that point made a written offer on behalf of the strikers to return to work in the event the agreement was ratified. However, when Mannarino called during the evening of September 30 to announce that the members had ratified the agreement, that the strikers were ready to go back to work, and that he wanted an immediate meeting to sign a summary agreement, Ferber asserts

[1] The original complaint, issued on December 27, 1979, was amended on March 11 and on May 6, 1980, at the hearing. All dates herein are in 1979, unless otherwise noted.

that he told Mannarino that this could not be done because, Ferber stated, the parties had not come to full agreement on the contract issues. Mannarino disputed this, asserting that they had come to full agreement. (These matters will be considered in some detail hereinafter.) The parties nevertheless agreed to meet on October 3 in Ferber's office.[2] The Union ceased picketing Respondent at this time.

On October 2, at 2:30 p.m., Respondent's management received two sheets of paper signed by 67 employees out of a total of 108 in the appropriate unit (see Resp. Exh. 2) reading: "We the following undersigned employees, with your help and approval, no longer wish to be represented by the U.S. Steelworkers Union or any other existing union. Instead, we would prefer to be represented by an in-plant committee with a representative from each department." (As discussed hereinafter, the General Counsel contends that Respondent induced and aided this petition.) Also on October 2, Ferber called Mannarino to advise that, because of a conflict of which he was unaware on September 30, he would be unable to meet on October 3.[3] The two agreed to meet on October 8. However, before this meeting could take place, Respondent's management, on October 5, sent Mannarino a letter stating:

> This letter is to advise you that the Company has received a petition signed by a majority of our employees in which they stated that they do not wish to be represented any longer by the Steelworkers for collective bargaining or any other purposes. In view of this petition, the Company has no choice but to go along with the desires of a majority of our employees. Accordingly this letter is to advise you that the Company is withdrawing recognition from the Steelworkers as the collective bargaining representative of our employees.

The parties have not met for bargaining since that date and Respondent has not drawn up or executed a document summarizing the agreements reached by the parties.

The General Counsel contends that the parties reached full agreement on a new bargaining agreement and that Respondent was obligated to execute a written memorial of that agreement. He also asserts that Respondent was not justified in withdrawing recognition from the Union (1) because the parties had reached agreement, (2) because Respondent had not fully complied with the Board's Order in Case 6-CA-11613 (244 NLRB 842 (1979)) then pending against Respondent, and (3) because Respondent otherwise did not have an objective basis, in a situation free from unfair labor practices, for a good-faith belief that the Union no longer represented its employees, contending that the employee petition was aided and induced by Respondent, and Main, Senchak, and Vannatten were discharged, in violation of the Act.

Respondent, on its part, denies that full and complete agreement was reached on a new bargaining agreement, or that it induced or aided in the disaffection petition (or that management knew of or should be held responsible for activities relied on by the General Counsel), or that the prior unfair labor practice case is sufficiently related to the present case to affect the Union's representative status, and, as has been noted, further denies that the discharge of Main, Vannatten, and Senchak violated the Act.

In addition to the above, Respondent claims that it was justified in withdrawing recognition from the Union on October 5, because if returned strikers and replacements for the strikers are counted as rejecting representation by the Union, as Respondent contends should be done in this case, the Union had lost its representative status by September 17, by which time Respondent states, "the number of striking employees who had returned to work together with the number of new employees hired as permanent replacements exceeded the number of employees who remained on strike." (Resp. br. p. 33.)

### B. *The Discharges*

#### 1. Timothy J. Vannatten

In early September, during the strike, two of the striking employees, Timothy J. Vannatten and Gary Krolicki, were walking along the Baltimore and Ohio Railroad tracks which paralleled, though somewhat elevated above, the west side of Respondent's property, when a rock-throwing incident occurred between workers on Respondent's property and Vannatten and Krolicki.[4]

Prior to that time, on August 3, Respondent had obtained an injunction prohibiting, *inter alia*, "picketing anywhere on [Respondent's] property or at or near any approaches on public streets leading to [Respondent's] property, "with certain enumerated exceptions, or from "threatening or committing violence against [Respondent's] . . . employees," or "Causing damage to [Respondent's] property . . . ."

On the morning in question, Vannatten and Krolicki stated that Respondent's employees came out of the plant and began harassing them with epithets and throwing stones over the plant fence, up the incline, at Vannatten and Krolicki as they stood on the railroad tracks. The two strikers say they were unable to move away, and avoid the stones, and retaliated by throwing stones back at the workers who soon moved back inside the plant.

Two employees who were hired during the strike, Albert Wayne Lumley and Mark Aloisio (the son of Foreman Pete Aloisio), testified that they and other employees were sitting in the plant lunchroom when they heard stones hitting the building, that both went outside to see what was occurring (Lumley says only he and Mark Aloisio went out; Aloisio recalls several employees

[2] Mannarino testified that he called Ferber, announced that the Union's members had accepted Respondent's proposal, that the strikers were ready to return to work, and that he would be ready to sign a summary agreement the following morning, to which Ferber replied he could not possibly have a summary prepared that quickly, whereupon they agreed to meet on October 3.

[3] Mannarino asserts that this call was in the late afternoon—thus after Respondent received the petition from the employees, while Ferber states that the call was in the morning. It is not necessary to resolve this conflict.

[4] Certain errors in the transcript are hereby noted and corrected.

going out), and that they remained outside only for seconds, when they quickly moved back into the building to avoid being hit by the stones. Both had difficulty recalling whether there was name calling, or what was said between the two sides during the incident, but the indication is that there was name calling. Lumley denies that he threw any rocks or saw any of his coworkers throw any rocks at Vannatten and Krolicki. Aloisio was not asked and did not deny (or affirm) that he or his coworkers had thrown rocks on this occasion.

I do not credit any of these witnesses entirely. I believe that the employees in the plant went outside to throw rocks at Vannatten and Krolicki, and did so, though probably only for a few seconds. I am not at all sure which side threw the first rocks, but I am convinced that Vannatten and Krolicki could have moved away from the area and avoided the confrontation. I do not credit their testimony that they did not move away for fear of being hit, or that the only means of escape was to trespass on Respondent's property.

Respondent states that Vice President Krause made the decision to discharge Vannatten based on reports from supervisors and employees that, on the occasion discussed above, Vannatten was standing in an area prohibited by the injunction and threw rocks at Respondent's employees and one of its buildings.[5]

I do not pass on whether Vannatten violated the court injunction. I neither have the right, nor do I want the right to pass on whether Vannatten was in contempt of the court order. That issue is for the court. Respondent, for its own reasons, did not bring the issue before the court, and the matter rests there.[6]

The stone throwing is another matter. I have found that both sides threw stones. Neither side was justified in this action. Even assuming that the workers threw first, in the circumstances this did not justify Vannatten and Krolicki in throwing stones at the workers and Respondent's building. In doing so, Vannatten engaged in misconduct which, if it were the real reason for his discharge, would justify Vannatten's termination. The General Counsel points out, however, that Respondent did not discharge the workers who threw stones at Vannatten and Krolicki, and, in fact did not discharge Krolicki, who engaged in the same conduct as Vannatten, arguing that Respondent used the rock throwing as a pretext to discriminate against Vannatten for his activity on behalf of the Union as a member of the Union's bargaining committee. However, there is no evidence that Respondent held any animosity toward the bargaining committee, or Vannatten in particular, because of their union activities. The record shows that Respondent also discharged other strikers who engaged in rock throwing against Respondent's property and workers. In the circumstances, I do not believe that Respondent's reason for terminating Vannatten was a pretext or was advanced in bad faith. On the basis of the above, I shall recommend that the allegations of the complaint that Respondent violated the Act in discharging Vannatten be dismissed.

[5] Respondent asserts that it failed to discharge Krolicki through inadvertence.

[6] As an example of the problems raised by Respondent's request that I pass on the order: I would not interpret the court order to prohibit Vannatten from walking on the railroad tracks, which are clearly not Respondent's property or at or near an approach on public streets leading to Respondent's property. Whether the court which issued the injunction would agree only that court can answer.

### 2. Anthony Senchak

Respondent asserts that Vice President Krause decided to discharge striker Anthony Senchak on the basis of reports from supervisors and employees that, on July 30, Senchak chased the truck of one of Respondent's vendors, Keystone Lawrence, and a passenger car which was following the truck as they left Respondent's premises and attempted to run these vehicles off the road, and that on the same day Senchak threatened that he knew where Foreman Brian Donahue lived and that he was going to get Donahue.

With respect to the truck following, the following findings are based on consideration of all the witnesses to the incident. To the extent that the testimony of any of them is inconsistent with these findings, it is not credited. On the day in question the Keystone Lawrence truck left Respondent's premises followed by a passenger car containing management personnel. Senchak was nearby on a motorcycle. The truck and car turned a corner out of Senchak's sight, and he followed on his motorcycle. When he turned the corner, he found a striker on the ground and others about who were shouting that the man on the ground had been hit by the car or the truck. Senchak did not stop, but followed the two vehicles, ostensibly to cause them to stop and await the sheriff, who Senchak says he saw in the group around the fallen striker. For the next 5 miles, Senchak and two other strikers on motorcycles drove in front of and around the truck and the car in such a fashion as to impede and interfere with their safe use of the highway, finally causing the truck and the car to pull off the road at a commercial establishment on the way, where the Keystone Lawrence driver called the police. Before the police arrived, Senchak and the other motorcyclists left, according to Senchak because they decided that the police were not going to come.

Based on the above I find that Senchak engaged in misconduct during the strike justifying his discharge. Even assuming that Senchak believed that the Keystone Lawrence truck or Respondent's car was involved in a hit-and-run incident, this would not justify Senchak's conduct. I shall recommend that the allegation of the complaint with respect to the discharge of Senchak be dismissed.[7]

### 3. Fred Main

It is asserted that Respondent decided to discharge striking employee Fred Main based on information received from supervisors and employees that, on July 30, Main took a board with nails embedded in it and assisted another striking employee, Ralph Bathurst, who attempted to puncture the tires of a truck leaving Respondent's premises, Bathurst having placed a board with nails in it under the tires of that truck.

[7] I do not pass on Senchak's alleged involvement with Supervisor Donahue inasmuch as that asserted incident cannot affect the result here.

During the incident referred to, Main was 6 or more feet from the gate to Respondent's facility when the truck involved exited from the gate. Bathurst hit the truck's tire with a board with nails in it and attempted to place the board under the truck's tire. Main did not aid or assist Bathurst in this venture. At the time, Main was holding a board in his hands, without nails in it.[8]

It has long been settled that each individual striking employee may be held responsible only for his own acts and conduct, and not for the acts of other strikers in which he did not participate. See, e.g., *Coronet Casuals, Inc.*, 207 NLRB 304 (1973). It is also quite clear that an employer violates the Act by discharging a striking employee for engaging in misconduct, if the employee in fact did not engage in such misconduct, even if the employer believes in good faith that the employee did so. *N.L.R.B.* v. *Burnup & Sims, Inc.*, 379 U.S. 21 (1964).

In the present case it is clear that Main did not engage in the misconduct for which he was discharged, or in any other misconduct shown by the record for which he might be disqualified for employment. It is therefore found that Respondent by discharging Fred Main in the circumstances violated Section 8(a)(1) of the Act.[9]

### C. *The Refusal To Bargain*

#### 1. The contract issue

The parties met for negotiation of a new bargaining contract on at least seven occasions after the beginning of the strike, the last two meetings being on September 19 and 28. It appears that these sessions were normally held in some neutral place, such as a nearby motel, and toward the end of these negotiations, they were attended by representatives of the Federal Mediation and Conciliation Service. The only witnesses who testified about these negotiations were Respondent Counsel Ferber, Union Representative Mannarino, Respondent Vice President Robert Krause (to a limited extent), and two employees called by the General Counsel on rebuttal. Except as consistent with the findings made herein, I have disregarded the testimony of the two employees. For the most part I was not impressed with their testimony.

Based on all the testimony, there is no question in my mind but that at the end of the session on September 28 both Respondent and the Union considered that they had arrived at a meeting of the minds on a complete bargaining agreement. There are several factors, in particular, that are convincing. Thus all the parties are agreed that at the end of the meeting on that day it was understood that the Union would take the matters agreed or offered by Respondent back to the membership for ratification, and that, if ratified, the strikers would call off their strike. It was further understood that the Union would call Respondent counsel at his home on Sunday if the agreement was ratified, and that, in that case, it would be necessary to draw up a summary agreement. It is most unlikely in the extreme that these expectations would be held by both parties unless they understood that the Union would be voting on a final agreement which would end the strike which had been in progress for 5 months. Respondent seems to suggest that the Union was taking a partial package to the employees for approval or disapproval, as the Union had done on other occasions during the negotiations. However, it is not credible, on this record, that the Union would be talking about calling off the strike for less than a complete contract, or that the parties would consider it necessary to call counsel at home on Sunday evening to report acceptance of some parts of, but less than all of an agreement, rather than waiting for the next bargaining session to report what was accepted and what rejected. Finally, it appears that the parties did not contemplate another negotiating session of the kind to which they were accustomed, at a neutral place, with full bargaining committees, and mediators in attendance.

Respondent Counsel Ferber, however, testified that, at the conclusion of the session on September 28, there were a number of items which were not settled: (a) the effective dates of the contract in the first, second, and third years, (b) eligibility for participation in the incentive bonus which had been agreed to and language to carry out the agreement of the parties, (c) various proposals made by the Union to which Respondent had not agreed, and (d) whether the work rules, which had been completely agreed, should be part of the contract.

(a) *The effective dates*: Close analysis of the record is convincing that the difficulty with this issue lies principally in the tendency of the witnesses, principally Respondent's counsel, to equate the effective date of the contract with retroactivity for the wage increase agreed on.[10] The two are usually the same (the effective date of the bargaining agreement is usually the date the wage increases commences), but that was clearly not the case here.

By the end of the meeting on September 19, the Union had agreed to limit wage retroactivity to April 25, which was acceptable to Respondent since the plant had been on strike since that date. Nevertheless, during the meeting on September 28, Union Representative Mannarino requested that the effective date of the contract be April 1 (the date following the expiration of the previous agreement). Though Respondent's counsel, Ferber, asserts that request seemed to him inconsistent with Mannarino's previous agreement to limit retroactivity to April 25, his testimony indicates that he agreed to the April 1 effective date, as the following shows (punctuation added):

> So at this point, I was totally confused as to what the effective date was, and . . . I asked him [Mannarino]. I said, "Now, do you want the effective

[8] I credit Main that the board did not have nails in it. Bruce Garrett, a member of Respondent's management, who testified that he saw nails in the board, was sitting in the passenger seat on the right-hand side of the truck cab. At the time, Main was 5 to 10 feet away from the truck, on the left-hand side of the truck. It is apparent from the stipulation of the parties that a film made of the incident by Respondent does not show that the board held by Main contained nails.

[9] I do not pass on the General Counsel's contention that the discharge also violated Sec. 8(a)(3) of the Act inasmuch as this would not affect the remedial Order herein.

[10] The problem does not appear with other economic issues, which were specially agreed on.

> date from April 1, 1979 to March 31, 1982? Is that your position right now?" He said, "Yes." . . . I said, "Is your position related to wages?" "Yes." And I said, "But not to other things in the agreement?" "Yes." "Okay," I said, "if the contract is ratified we're going to have to prepare some kind of a summary."

Mannarino's testimony on the point, which I credit, is that Respondent's counsel agreed to the April 1 effective date, as indicated above, which he wrote down in his notes of the meeting,[11] and so informed the membership at the ratification meeting, while at the same time informing the members that the wage increase would become effective for them only upon their return to work.

However, Respondent further insists that the parties never agreed on the date that the agreed upon wage increases would become effective in the second and third year of the contract. Mannarino testified that it was agreed that the wage increases were to be effective on April 1 in each of those years. Ferber disputes this.[12]

In the usual case, in the absence of any specific agreement to the contrary, it would be presumed that wage increases in the second and third year of a bargaining agreement would be effective on the anniversary of the effective date of the contract. This appears to have been the normal pattern followed in the previous bargaining agreements between the parties. Thus, though the 1973–76 agreement provides (most unusually) for wage rates prior to its April 1 effective date (Joint Exh. 1, Appendix A), it was testified that increases in the second and third year were effective on April 1 of each of those years. The 1976–79 agreement, which was effective on May 1, provides for annual increases on May 1 of each year of the contract.

Ferber, however, testified that, toward the end of the September 28 meeting, the Federal mediator called him from the joint conference into a private meeting, in which he says the mediator cautioned him that there had been no discussion or agreement as to when wage increases would be effective in the second and third year of the agreement (indicating again an understanding that the Union proposed to vote on a completed agreement). Based on the logic of the situation, as well as on experience, I find this incident strange.[13] The issue involved would be one that the mediator might be expected to broach to both parties in joint session, if the mediator were concerned that both parties had overlooked it. Though I would not expect a Federal mediator obviously to seem to assist one side or the other, it might well be that, on this occasion, the mediator called Ferber aside to remind him that, in the absence of some specific agreement on the issue, the wage rate in the second year would be effective on April 1, only 6 months after that date, a point which I am certain Mannarino had well in mind. The oddity of this situation is further compounded by the fact that not only did Ferber not mention this issue when he returned to the joint session, but he permitted the session to break up without mentioning it. From this I infer that he believed that the parties had reached an understanding on the effective dates for wage raises in the second and third years of the agreement.

Based on the above, and the record as a whole, I find that, at the end of their negotiations on September 28, the parties understood that the new agreement would be effective April 1, 1979, though wages would be retroactive only to April 25, and that wage increases in the second and third year would be effective on April 1 of each such year.

(b) *Union proposals*: During the course of negotiations, the Union made several contract proposals and demands for improved conditions. It is not necessary to describe them. They were discussed from time to time, but except for work rules referred to immediately below, not agreed to by Respondent. The ones Respondent brings in issue here were not specifically withdrawn by the Union. None of these was discussed during the meeting of September 28.

It is difficult to understand why Respondent continues to insist that these are unsettled issues precluding the drafting and execution of a contract. When the Union sought ratification of a contract between the parties, it obviously sought approval of only those items which Respondent had said were acceptable. It is a contradiction in terms to assert that ratification would be sought of terms which had been rejected. The fact that the Union asserted that it would seek ratification of the terms agreed was in itself an implied withdrawal of terms not agreed, if such a withdrawal were really necessary.

(c) *Work rules*: Prior to the 1979 negotiations Respondent had written work rules, which were not physically incorporated in the bargaining agreement. Early in the negotiations in 1979, the Union requested changes in the work rules, apparently to provide for progressive discipline for some violations of the rules. As a result of discussions at the bargaining table, Ferber drew up a lengthy and quite detailed set of work rules and procedures which he proposed to the Union should be physically included in the bargaining agreement. Ferber testified, "There were many items in the work rules that [the union negotiators] objected to. With rare exception, I believe, I agreed to each one of [the Union's] proposed modifications to the rules. And as far as I was concerned, we finished up the rules at the end of, near the end of that meeting [September 28.]" Mannarino agrees that the parties were in agreement on the proposed rules. They disagree on whether the parties had agreed to physically incorporate the rules as part of the bargaining agreement itself.

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[11] Mannarino's notes of the September 28 meeting, made at the time, state: "Effective date of new contract April 1, 1979 terminates March 31, 1982 at 11:59 pm."

[12] Nevertheless, there is indication in Ferber's testimony quoted above supporting Mannarino. Since it is clear, as has been found, that, at all times since September 19, Mannarino understood (and so reported to his members) that wages in the first year of the contract would not be retroactive to April 1, Ferber's testimony showing that both he and Mannarino linked wages to April 1 could only have reference to the second and third year of the agreement.

[13] We are deprived of the testimony of the mediator because the rules of the Mediation Service and public policy prevent him from testifying concerning his mediation efforts. *N.L.R.B.* v. *Joseph Macaluso, Inc.*, 104 LRRM 2097 (9th Cir. 1980).

The issue seems one of much turmoil about little of substance. As Respondent's counsel testified, in respect to another matter, "There [are] many situations in which a company [and] union may agree to side agreements which for one reason or another do not become incorporated into the contract, [but] under a substantive contract they're there." Nevertheless, Respondent argues (br. pp. 9–10) that incorporation of Respondent's rules proposal physically in the contract is an issue of "tremendous significance to the administration of the agreement," asserting that Respondent's proposal provides that (1) the work rules were "instituted with the approval of the Union," and (2) "an arbitrator has no authority to alter them or to modify the degree of discipline . . . ." The first of these arguments falls of its own weight. There is no dispute that the rules were agreed at the end of the last negotiating session. It does not assist Respondent to argue, as it does here, that, in earlier sessions, the Union indicated it would not agree. The second contention is of more significance. However, so far as this record shows it was never raised, discussed, or became an issue during the negotiations. It was never specified as such during the hearing as a dispute between the parties. Indeed, it was my impression at the time that, when Respondent's counsel testified that he had agreed to each of the Union's objections to the work rules, "with rare exception," and that by the end of the bargaining session "we finished up the rules," the parties were agreed upon Respondent's proposal, as modified during the bargaining (counsel never specified the modifications agreed to). Upon further study of the record and briefs, I see no reason to alter my opinion, and I find that the parties were agreed upon Respondent's work rule proposal (as modified).[14]

(d) *The incentive bonus*: In the 1976–79 bargaining contract (contained in a separate memorandum of understanding), the parties had provided for an incentive bonus for carshop employees based essentially on their ability to produce products in less hours than Respondent had estimated, and thus at a savings to Respondent. In the 1979 bargaining, Respondent sought the Union's agreement to eliminate this bonus. By September 28, the parties were bargaining on a lump sum amount (the "buy-out") to be distributed to the carshop employees, which the Union would accept as a *quid pro quo* for elimination of the bonus arrangement. This was a major obstacle preventing agreement on a new bargaining contract. During the September 28 session the parties came to an agreement on the amounts of the buy-out and the proportionate scale by which it would be distributed to the employees. No other issue with respect to the incentive plan was raised by Respondent and there was no further discussion on the matter.

Now Respondent contends that there remained to be decided which employees should participate in the buy-out (e.g., whether employees had to be employed on certain date to qualify, or whether employees who were sick, or had been discharged, or had quit should participate), and contract language to carry out the agreement. The General Counsel argues that this contention is a last-minute afterthought designed to avoid the bargaining contract to which Respondent had agreed. The facts do tend to support such an inference. Nor does it appear that language on eligibility, agreed to by the parties, is lacking to meet the situation. Bargaining for the new contract between Respondent and the Union proceeded on a basis common to negotiations for a renewal contract: language of the prior contract was to be carried over into the new agreement, except where changed by the parties. In the memorandum of understanding concerning the incentive bonus in the prior contract there is language concerning eligibility to participate which could be applied here (see p. 4, sec. 7, of bonus program attached to Jt Exh. 2). To the extent that problems may further arise which are not specifically covered, the memorandum of understanding provides that "The parties realize that many problems will arise as a result of the installation of this Bonus Pool [here read "buyout"] and will meet periodically at the request of either party to resolve problems that may arise during the life of this agreement."

Under the circumstances, I find that the parties were in agreement on the issue at the end of the negotiations. To hold otherwise would permit Respondent, who did not raise the issue during bargaining and thereby prevented its resolution (if resolution were required), to use this tactic to prevent the agreement to which it assented during the negotiations.

2. Alleged loss of majority

(a) Respondent asserts that, as of September 17, the number of striking employees who had returned to work together with the number of new employees hired as replacements exceeded the number of employees who remained on strike, and argues that, particularly since the remaining employees allegedly had to cross a picket line "marked with violence,"[15] these circumstances show that the Union had lost its majority status by that date. On September 17 there were 39 employees on strike (including Vannatten, Senchak, and Main, who were not discharged until September 27), 19 returned strikers, and 38 striker replacements.

However, it has long been established that "an employee's decision not to support a strike does not establish that the employee has rejected the collective bargaining representative." See *Pennco Inc.*, 242 NLRB 467, and cases cited. The fact that employees elect to cross a picket line to return to work does not evidence a repudi-

[14] In reviewing the issues which he asserted were not resolved at the end of negotiations on September 28, Ferber stated, "Let's see, rules and regulations had been agreed upon. I'm going to assume that since we went over each one of those that there wouldn't have been a problem. They had to be retyped so that at least we [had] to review the language of that to make sure it was accurate."

[15] The General Counsel asserts in his brief (p. 7) that there is no evidence of any picket line violence after July 31 (except the Vannatten incident) and that only very few striker replacements were hired before that date. The record shows that, of the returned strikers and replacements, none were hired before July 30, four were hired July 30 and, three were hired July 31. While I am not certain whether any incidents (other than that involving Vannatten) occurred after July 31, I am aware of only one incident in the record involving employees as such. Significantly, no striker replacement or returned employee testified to encountering any picket line violence.

ation of the Union. See *N.L.R.B.* v. *Easton Packing Co.*, 437 F.2d 811 (3d Cir. 1971); *N.L.R.B.* v. *Frick Company*, 423 F.2d 1327 (3d Cir. 1970). Indeed, this would be particularly true where, as here, the striking employees return only under pressure from their Employer that they will be replaced if they do not return. To hold that this indicates an intention to relinquish representation by the Union would be to establish as a rule that the striking employees may be confronted by their employer with the option of giving up union representation or risking their jobs, whereas the rule presently established is that the employer may legally offer the alternative only of relinquishing the strike or risking replacement in their jobs.

It is thus unnecessary to extensively discuss the General Counsel's further arguments that, under the applicable precedents, it is presumed that new hires during a strike are presumed to support the Union in the same ratio as the employees they replace, *Pennco, Inc., supra*, and that under all the circumstances this contention of Respondent (that the Union lost its majority on September 17) is clearly an afterthought, not advanced in good faith. There may be some merit to these contentions, but under the legal principles discussed above, in any event, it is clear that the Union had not lost its representative status on September 17.

(b) Respondent asserts that it had a good-faith doubt of the Union's representative status by October 5 because of the receipt of an employee petition signed by 67 employees asserting that they no longer wished to be represented by the Union.

The General Counsel contends that the petition will not support Respondent's asserted good-faith doubt, and thus must be disregarded because (1) Respondent induced and aided the circulation and execution of the petition, (2) a complete bargaining contract having been agreed to between Respondent and the Union, Respondent was not privileged to withdraw recognition from the Union during its agreed-upon term, and (3) Respondent having not fully complied with the remedial order in a prior unfair labor practice proceeding, and having unlawfully discharged a striker as found in this proceeding, may not withdraw recognition until it has remedied those unfair labor practices.

The petition, stating that the employees no longer desired to be represented by the Union, is dated August 27. Apparently from that time, until October 2, it was circulated by an employee, I. D. Runyon. It would appear that this activity occurred principally, if not entirely, on Respondent's plant premises.

Respondent's car shop superintendent, Harold Robinson, testified that prior to the time he first saw the petition, about the last of August or the first of September, he discussed with Vice President Krause a paper he had seen posted on the plant bulletin board concerning a meeting of employees to discuss further representation by the Union. Robinson says that Krause told him "that if the employees wished to have this petition, we wouldn't interfere with their signatures in any way, it would have no bearing on their jobs, so long as they did it on their own time. He didn't want it discussed during working hours, and if anyone was discussing it, he wanted to know that right away."[16]

Shortly thereafter, Robinson says Runyon showed him the petition, then without any signatures on it, and during a safety meeting, normally held in the lunchroom each morning, asked Robinson if he [Runyon] could circulate the petition in the lunchroom that morning and secure signatures during time when the employees otherwise were scheduled to return to work. Robinson asserts that he gave all the employees present permission to remain in the lunchroom and sign the petition, rather than return to work.[17] Robinson says that he and the other supervisors were not present when the petition was signed. Robinson reported this employee meeting to Krause and Respondent President Garrett.[18]

Michael Egbert, a former employee of Respondent,[19] was approached, together with some other employees, in the lunchroom, sometime in late September or the first of October, by employee Runyon to sign the petition, Runyon stating that the employees should sign to keep the Union out in order that the employees might keep their jobs. Egbert says that most of the employees, including himself, left to go back to work without signing the petition. He further testified that outside the lunchroom the employees fell into conversation with Superintendent Robinson.[20] Egbert asserts that Robinson "suggested that we sign [the petition]," saying that, "if we didn't sign it, we would more than likely lose our jobs."[21] Egbert states that Foreman James Hill also came up and made very similar remarks. After hearing Robinson and Hill, Egbert returned to the lunchroom, where the petition was lying on the table, and (though there was space enough to sign his full name, as others had done) signed only his first name.

Before he was discharged, Egbert, at Respondent's request, signed an affidavit for Respondent's counsel in which he stated that he did not discuss the petition with Respondent's supervisors. He states that he did this because Robinson and Hill had said they would get into

[16] Krause testified he had previously heard rumors of a petition, and he told Robinson "not to get involved," not to "allow the petition . . . in a work area" and not permit it "to be signed on company time."

[17] Robinson's testimony indicates that he gave the employees permission to extend their normal break period for this purpose. In any event, it is clear that the employees were permitted to remain in the lunchroom to sign the petition during time they should otherwise have been at work.

[18] Robinson tended to give varying testimony as to this, first admitting he made such a report, then seeming to deny it, and finally saying that "I guess I mentioned it to Bob Krause." Considering the fact that Robinson had originally reported the bulletin board posting on his own, and Krause's instruction to be kept advised, I am convinced that Robinson reported the circumstances of the employee meeting.

[19] Egbert was a striking employee who returned to work on September 10, during the strike. He was thereafter discharged on January 3, 1980, for reasons unrelated to the strike.

[20] Egbert testified that Robinson came up to the group of employees. His affidavit given to the Board agent states that the employees approached Robinson. Egbert explained at the hearing that the employees drew Robinson into the conversation by asking him about the petition.

[21] In his affidavit given to the Board agent, Egbert says that Robinson said, "I shouldn't get involved, but if I were in your place, I would sign the petition." Egbert states that this was "close to the meaning" of what Robinson said.

trouble if their comments about the petition became known.[22]

Robinson and Hill deny that they made the statements attributed to them by Egbert, or words to that effect.[23]

This incident presents a very difficult credibility problem. The variances between Egbert's testimony and his Board affidavit raise substantial questions as to exactly what Robinson and Hill might have said on this occasion. I am satisfied that they said something which encouraged the employees who were reluctant to sign the petition to change their minds and do so. I credit Egbert that he initially refused to sign the petition although urged by Runyon, but, upon the urging of Robinson and Hill, immediately returned and signed the paper.[24] Further, Egbert had little or nothing personally to gain by testifying against Respondent. Though his testimony indicated less than a sharp recall of details, I believe he did relate, to the best of his ability, the sense of the situation.

On the basis of the above, I find that Superintendent Robinson, and to a lesser degree Supervisor Hill, aided in the circulation of the disaffection petition and induced and encouraged employees to sign it. By such action Respondent violated Section 8(a)(1) of the Act. *River Togs, Inc.*, 160 NLRB 58 (1966); see also *Seneca Foods Corp.*, 244 NLRB 558 (1979); *Porta Systems Corporation*, 238 NLRB 192 (1978).[25]

Respondent argues that Robinson and Hill were not authorized to take the actions found herein, and, indeed, were instructed not to do so. The problem here, however, is that Respondent put the supervisors in a position where the employees could reasonably believe that they spoke and acted for Respondent in the circumstances. See *International Association of Machinists, Tool and Die Makers Lodge No. 35, etc.* v. *N.L.R.B.*, 311 U.S. 72 (1940). Respondent did not advise the employees of the asserted limited authority of these supervisors, and, after being advised that Robinson had permitted the disaffection petition to be circulated on the Company's premises during working time, did nothing to assure the employees of Respondent's neutrality with respect to the petition. In these circumstances, the employees were justified in believing that Respondent favored the petition. As the Supreme Court said in *I.A.M., supra*, where the employer had assisted a favored union over another to which the employer was hostile: "Slight suggestions as to the employer's choice . . . may have telling effect among men who know the consequences of incurring that employer's strong displeasure." (311 U.S. at 78.)

It is therefore found that the disaffection petition was tainted by Respondent's actions and may not be relied on as a basis for doubting the Union's continued status as collective-bargaining representative of Respondent's employees in the appropriate unit.[26]

### 3. Conclusions

To summarize: Having agreed to a bargaining agreement with the Union, by September 30, Respondent was not privileged to withdraw recognition during its term. The purpose of the Act is to achieve industrial stability through encouragement of employers and unions which represent their employees to enter into bargaining agreements which shall be honored during their term, absent unusual circumstances not present here. For reasons set forth above, the Union did not lose its representative status on or about September 17, nor was Respondent justified in withdrawing recognition from the Union on October 5. It is therefore found that Respondent, by withdrawing recognition from the Union and refusing to execute the bargaining agreement agreed to, violated Section 8(a)(5) and (1) of the Act.[27]

## Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by Respondent at its Cherry Street, New Castle, Pennsylvania, facility, excluding clerical and technical employees and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been and continues to be the exclusive representative of the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By inducing, encouraging, and aiding employees on Respondent's premises, and during worktime, to circulate and sign antiunion petitions, Respondent violated Section 8(a)(1) of the Act.

6. By withdrawing recognition from the Union as the bargaining representative of the appropriate unit set forth above, and by refusing to acknowledge, reduce to writing, execute, and abide by the collective-bargaining contract agreed to by Respondent and the Union, Respondent violated Section 8(a)(5) and (1) of the Act.

[22] Egbert asserts that the reference in his Board affidavit to their statement that they "shouldn't be talking" to the employees about the petition refers to this.

[23] It is noted that Robinson also testified that he couldn't "recall any conversations with the employees [concerning the petition] after I talked to Runyon," but immediately thereafter admitted recalling a number of such conversations.

[24] No one asked Egbert why he signed only his first name, but such conduct is consistent with action taken under stress or in indecision.

[25] I have fully considered the 11 cases cited by Respondent in support of the argument that the actions of Robinson and Hill did not violate the Act. I believe them to be distinguishable. I know of no case in which it has been held that an employer may legally encourage, and permit employees to seek signatures to a petition for or against a union, in circumstances like the present case.

[26] There is evidence that the Union, during the period it was recognized by Respondent as the employees' bargaining agent, was granted permission to hold meetings in the lunchroom after working hours, and to engage in activities and meetings during worktime which involved administration of the collective-bargaining agreement. Some of these meetings were called at Vice President Krause's request to improve relations between management and the Union. So far as appears, these constitute normal incidents in a working labor relations relationship. They do not justify Respondent's actions in aiding and abetting the antiunion petition.

[27] It is unnecessary to pass on the General Counsel's further argument that Respondent was precluded from withdrawing recognition during the pendency of unremedied unfair labor practices.

7. By discharging Fred Main for alleged activities during a strike, Respondent violated Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. Respondent did not violate the Act by discharging Timothy Vannatten and Anthony Senchak.

## THE REMEDY

It having been found that Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that Respondent violated the Act by the discharge of Fred Main, it will be recommended that Respondent be ordered to offer Fred Main immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and benefits, and make him whole for any loss of pay or benefits which he may have suffered as a result of Respondent's termination of his employment by payment to him of a sum of money equal to that he would have earned as wages and other benefits from his termination to the date of his reinstatement, less his net earnings during that period, and interest thereon, to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[28]

It further having been found that Respondent has unlawfully refused to bargain with the Union by withdrawing recognition from the Union and failing to reduce to writing, execute, and abide by a collective-bargaining contract agreed to between the Union and the Respondent, I shall recommend that Respondent be ordered to cease and desist therefrom and take certain action to effectuate the policies of the Act.

Because Respondent's conduct evidences a complete disregard for the purposes of the Act, I shall recommend that Respondent be ordered not to interfere in any manner with the employees' exercise of rights under the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended:

## ORDER[29]

The Respondent, Garrett Railroad Car & Equipment, Inc., New Castle, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Inducing, encouraging, and aiding employees in the circulation of petitions to disavow United Steelworkers of America and its Local 8089, AFL-CIO-CLC, the Union herein, as the exclusive bargaining representative of its employees in an appropriate bargaining unit.

(b) Withdrawing recognition from and refusing to bargain with the Union as the exclusive bargaining representative of its employees in an appropriate unit.

(c) Refusing to reduce to writing, execute, and abide by the terms of the collective-bargaining contract agreed to between Respondent and the Union on September 28, 1979.

(d) Discharging or refusing to reinstate employees for engaging in concerted activities protected by Section 7 of the Act.

(e) In any other manner interfering with, coercing, or restraining employees in the exercise of the rights guaranteed them under Section 7 of the Act, including the right to free choice with respect to representation for the purposes of collective bargaining.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union with respect to wages, hours, and conditions of employment of the employees in the following appropriate unit: All production and maintenance employees employed by Respondent at its Cherry Street, New Castle, Pennsylvania facility, excluding clerical and technical employees, and guards, professional employees and supervisors as defined in the Act, and embody any understandings reached in a written signed agreement.

(b) Upon request, forthwith reduce to writing, execute, and honor and abide by the terms of the agreement between Respondent and the Union reached on September 28, 1979.

(c) Offer Fred Main immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position and make him whole for any loss of earnings or benefits he may have suffered by reason of his discharge, in accordance with the provisions set forth in the section hereinabove entitled "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its operations at New Castle, Pennsylvania, copies of the attached notice marked "Appendix."[30] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall

[28] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[29] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[30] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that as to alleged violations of the Act not found hereinabove in this Decision the complaint be and it hereby is dismissed.